

California Integrated Waste Management Board

Board Meeting

February 15-16, 2005

AGENDA ITEM 1

ITEM

Consideration Of New Projects For The Solid Waste Disposal And Codisposal Site Cleanup Program

I. ISSUE/PROBLEM STATEMENT

California Integrated Waste Management Board (Board) staff has completed an evaluation and recommends approval of two new grants pursuant to the Solid Waste Disposal and Codisposal Site Cleanup Program (Program). Table 1 provides general information on the grants. Detailed project information is in the agenda item attachments. In addition, due to the low unencumbered balance remaining in the Solid Waste Cleanup Trust Fund, staff is recommending that no new grant/loan applications be accepted for the remainder of the fiscal year unless additional funds become available (see discussion in Fiscal Impacts section).

Table 1. Project Information Summary.

Grantee	Site Priority	Grant Score	Board Funding Recommended	Funding Mechanism	Cost Recovery
Sacramento County	A1	78	\$500,000.00	Illegal Disposal Site Cleanup Grant	Not Applicable
City of Barstow	A1	88	\$498,891.50	Illegal Disposal Site Cleanup Grant	Applicable on private parcels

II. ITEM HISTORY

The Board has not previously considered the proposed projects.

III. OPTIONS FOR THE BOARD

Options for the Board include:

1. Approve the proposed grants, adopt Resolution Number 2005-31 and direct staff not to accept any new grant/loan applications for the remainder of the fiscal year unless additional funds become available through cost recoveries or other measures;
2. Approve the proposed grants, adopt Resolution Number 2005-31 and direct staff to continue to accept new grant/loan applications for the remainder of the fiscal year;
3. Modify staff's recommendation for the proposed projects and/or the acceptance of grant/loan applications for the remainder of the fiscal year;
4. Disapprove the projects; or
5. Direct staff to provide additional information and bring the projects back to a future meeting of the Board.

IV. STAFF RECOMMENDATION

Staff recommends option 1.

V. ANALYSIS

A. Key Issues and Findings

The Program addresses cleanup of solid waste disposal and codisposal sites where the responsible party either cannot be identified or is unable or unwilling to pay for a timely remediation and where cleanup is needed to protect public health and safety or the

environment. Cleanup projects are implemented through Board-managed contracts, grants, and loans. The Board approved Program policies in February and September 1994, March and September 1995, and February, June, and August 1999. Regulations incorporating the approved policies were adopted by the Board in May 2000 and became effective September 11, 2000. In addition, the Board approved the grant scoring criteria and the evaluation process for fiscal year 2004/2005 in June 2004. As reported in that item, complete and eligible applications received by December 13, 2004, would be accepted, scored, and considered at the February 2005 Board meeting.

Title 14, California Code of Regulations, section 18904 specifically lists eligible and ineligible remedial actions under the Program and allows the Board to consider approval of any other remedial actions not specified as ineligible. Unless otherwise noted, specific actions proposed for each project are specifically eligible pursuant to the regulations.

B. Environmental Issues

Based on available information, staff is not aware of any environmental issues related to this item. However, these two proposed grants will clean up waste that poses a health and safety threat to the public health and safety and the environment.

C. Program/Long Term Impacts

Based on available information, staff is not aware of any long-term impacts related to this item.

D. Stakeholder Impacts

Based on available information, staff is not aware of any stakeholder impacts related to this item.

E. Fiscal Impacts

The amount proposed in this item for grants is approximately \$1,000,000. At the time this agenda item was prepared the amount available for new contracts, grants, and loans was approximately \$2,500,000. If the Board approves the grants, Program staff estimate approximately \$1,500,000 of unencumbered funds will remain for fiscal year 2004/2005.

Program staff recommends that, if the Board approves the grants, the unencumbered balance remain in the Solid Waste Disposal Site Trust Fund and no new grant/loan applications be accepted for the remainder of the fiscal year unless additional funds become available through cost recoveries or other measures. This would provide a contingency for potential emergency responses or other high priority Board-managed projects for the remainder of fiscal year 2004/2005, as determined by the Board.

F. Legal Issues

Public Resources Code Section 48023 directs the Board to seek reimbursement for monies expended under the Program to the extent possible. Expended funds may be recoverable from the property owners and other responsible parties in a civil action brought by the Board [Public Resources Code Section 48023(c)] and/or by imposing a lien upon the real property owned by the property owners that is subject to the remedial action [Public Resources Code Section 48023.5(a)].

Under the Program cost recovery policy (Resolution No. 1999-199), the Board may decide not to pursue cost recovery based on factors including, but not limited to:

(1) publicly owned sites maintained for public benefit and use; (2) the owner did not cause the disposal of waste; (3) the owner will not gain a benefit due to condition of property; (4) the value of property significantly less than cost of cleanup; (5) hardship to the property owner; or (6) no responsible party. The decision not to pursue cost recovery requires four affirmative votes from the Board.

Provisions to indemnify the Board are contained in standard agreements with Board contractors. Cooperative agreements with site owners and grantees are established prior to the start of approved Board-managed and grant projects, which include, when applicable, specific cost sharing or cost recovery provisions in order to ensure that the Board is properly reimbursed, and provide indemnification against liability for acts or omissions of the owner and/or grantee. In addition, Section 25400 of the Health and Safety Code provides additional immunity from liability for the Board from cleanup projects.

Enforcement aspects for the projects are summarized in the attachments. Cost recovery aspects proposed in this item are summarized in Table 1 and are included in the attachments.

G. Environmental Justice

As directed by the Board, the grant applications being considered for award include the Board's Environmental Justice Certification, and the Grant Agreement shall include the Board's Environmental Justice provision.

H. 2001 Strategic Plan

This item supports Strategic Plan Goal 4, by directing Board resources to manage and mitigate the impacts of solid waste on public health and safety and the environment.

VI. FUNDING INFORMATION

1. Fund Source	2. Amount Available	3. Amount to Fund Item	4. Amount Remaining	5. Line Item
Solid Waste Cleanup Trust Fund	\$2,535,338.03	\$999,891.50	\$1,535,446.53	C & P

VII. ATTACHMENTS

1. Sacramento County Illegal Disposal Site Cleanup Grant
2. City of Barstow Illegal Disposal Site Cleanup Grant
3. Resolution Number 2005-31

VIII. STAFF RESPONSIBLE FOR ITEM PREPARATION

- A. Program Staff:** Wes Mindermann **Phone:** (916) 341-6314
B. Legal Staff: Steve Levine/Holly B. Armstrong **Phone:** (916) 341-6064/6060
C. Administrative Staff: Roger Ikemoto **Phone:** (916) 341-6116

IX. WRITTEN SUPPORT AND/OR OPPOSITION

A. Support

As of the time this item was submitted for publication any specific support for particular projects is noted in the attachments.

B. Opposition

Staff had not received any written opposition at the time this item was submitted for publication.

Sacramento County Illegal Disposal Site Cleanup Grant

Proposed Remediation Project: Sacramento County (County) proposes a ten step program to combat illegal dumping and aggressively confront the problem through the timely removal of trash, physical preventative measures, enforcement, and proactive outreach and education. The County proposes to concentrate on public rights-of-way in five zones with historical illegal dumping, which accounts for 41 of the 97 chronic illegal disposal sites in the County in 2002/2003. County agencies working cooperatively on the project include Code Enforcement, the Sheriff's Department, the Municipal Services Agency, the District Attorney, and Environmental Health and Building Services. In an effort to prevent the conversion of illegal dumping from public land to private land the County will conduct outreach activities, including: media advisories and news releases, brochures, direct-mail flyers to the public and haulers, law enforcement brochures, a public web site for education and to report violations, and public services announcements. The County will also use its own funds to fund the Sacramento Citizen's Crime Alert Reward Program to provide incentives to citizens who alert authorities of illegal dumping activity.

Recommended Amount: \$500,000.00

Site Prioritization: Based on the degree of risk to public health and safety and the environment posed by conditions at the sites, the prioritization category is A1. Priority A1 is a confirmed condition of pollution or nuisance from solid waste based on comparison with state minimum standards with significant residential, industrial, park, recreation, or environmentally sensitive areas within 1,000 feet.

The grant application for this project was evaluated and scored using the process and scoring criteria that were approved by the Board in June 2004. The grant proposal received a score of 78 and exceeded the required minimum score of 60 points.

Enforcement Actions and Cost Recovery: Enforcement is conducted by County Code Enforcement Officers, who inspect suspected locations for violators, perform surveillance, and detect and cite violators. To support enforcement action against illegal dumping, the County proposes to enhance its ability to document and prosecute offenders as well as provide support for sting operations. All the sites being remediated are located alongside public roads and other public rights of way (including the cleanup of an incidental number of tires which "spill over" from the rights of way onto neighboring private parcels), or on other public property where indiscriminate dumping has occurred. As this is a grant, cost recovery is not applicable as to the County.

As with grants, the public entities' need for the funds is to be considered. The County reports that given the especially chronic nature of the proposed sites, the County cannot adequately clean up and provide enforcement and surveillance on these sites without requested grant funding. Board staff has reviewed this information and concurs with the applicant's determination of financial need.

Support: Staff has not received any written support at the time this item was submitted for publication.

Opposition: Staff has not received any written opposition at the time this item was submitted for publication.

City of Barstow Illegal Disposal Sites Cleanup Grant

Proposed Remediation Project: The City of Barstow (City) illegal disposal sites are 71 residential, park, and commercially zoned properties located throughout the City. The majority of dumping is occurring along the Mojave River bed, which consists of about 70 acres of desert land and has been used for illegal dumping for decades. Waste found on all the proposed sites includes garbage, burned and dilapidated buildings, cans, bottles, used appliances, furniture, scrap metal items, wood debris, televisions, computers with monitors, tires, and construction and demolition debris. The discarded materials at these sites have become attractive nuisances, as the aspect of “free disposal” and the avoidance of the fee-supported landfill fosters continued dumping. Many of the sites resulted from when the City adopted mandatory garbage collection in 1983 and many of the residents continued dumping on their own and public property. The City continues to encourage proper disposal and behavior through enforcement of existing rules in the Municipal Code by Code Enforcement Officers. To prevent additional illegal dumping the City has also supported community cleanup days, added two additional Code Enforcement Officers to the Police Department during the last year, and the City Council adopted and supports an aggressive anti-litter campaign.

The illegally dumped waste is blight on surrounding properties, neighborhoods, and the community at large. The City Code Enforcement Department has used the powers afforded them through the City Municipal Code to compel the owners to clean their properties. The City will contract with a local construction/demolition firm to clean up the sites and remove solid waste materials for proper disposal. Metal items (e.g., abandoned vehicles and appliances), waste tires, and household hazardous waste will be removed for proper recycling/disposal.

Recommended Amount: \$498,891.50

Site Prioritization: Due to the proximity of neighborhoods and residences to affected properties proposed for this grant, the prioritization category is A1. Priority A1 is a confirmed condition of pollution or nuisance from solid waste based on comparison with state minimum standards, with residents within 1,000 feet.

The grant application for this project was evaluated and scored using the process and scoring criteria that were approved by the Board in June 2004. The average score received by the grant proposal was 88, which exceeds the required minimum score of 60.

Enforcement Actions and Cost Recovery: The City Code Enforcement Department has identified and prioritized properties throughout the City that are creating an unsafe environment due to lack of funds and the inability of the owner to comply with the Barstow Municipal Code. The City has already issued Notices of Abatement on a number of the subject properties, ordering the landowners to remediate by a prescribed deadline, and will issue further notices or other orders against the remaining properties prior to remediating those sites. In all cases the City will either: (a) notify the landowners of the Board’s provision of funding for the remediation, and that if the site is not remediated before the date set for the City’s cleanup to commence, that the Board grant funds expended constitute a lien upon the subject property, pursuant to PRC Section

48023.5;" or (b) conduct an abatement hearing and place a lien on the property, naming the Board as a beneficiary.

As with grants, the public entities' need for the funds is to be considered. The City reports that given the especially chronic nature of the proposed sites, the City cannot adequately clean up and provide enforcement and surveillance on these sites without requested grant funding. Board staff has reviewed this information and concurs with the applicant's determination of financial need.

Support: Staff received letters of support from the Honorable Bill Maze, State Assemblymember, Thirty-Fourth District, and the Honorable Bill Postmus, County Supervisor, First District and Vice-Chairman of the San Bernardino County Board of Supervisors.

Opposition: Staff had not received any written opposition at the time this item was submitted for publication.

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

Resolution 2005-31 (Revised)

Consideration Of New Projects For The Solid Waste Disposal And Codisposal Site Cleanup Program

WHEREAS, Public Resources Code Sections 48020, *et seq.* authorizes the California Integrated Waste Management Board (Board) to implement the Solid Waste Disposal and Codisposal Site Cleanup Program (Program) to remediate environmental problems caused by solid waste and clean up disposal sites to protect public health and safety and the environment where the responsible parties cannot be identified or are unable or unwilling to pay for timely remediation; and

WHEREAS, the Board has approved guidelines, policies, and regulations for the Program to clean up sites; and

WHEREAS, the proposed projects satisfy the Board guidelines and policies pursuant to the Program.

NOW, THEREFORE, BE IT RESOLVED that the Board approves an illegal disposal site cleanup grant under the Program not to exceed five hundred thousand dollars (\$500,000.00) to Sacramento County and an illegal disposal site cleanup grant under the Program not to exceed four hundred ninety-eight thousand eight hundred ninety-one dollars and fifty cents (\$498,891.50) to the City of Barstow. The Board hereby directs staff to develop and execute a Grant Agreement with each grant recipient to implement remediation measures and encumber the funding; and

BE IT FURTHER RESOLVED that the award of the grants is conditioned upon the return by the grantees of a complete and executed Grant Agreement within ninety (90) days of the date of the mailing of the agreement package by the Board; and

BE IT FURTHER RESOLVED that the award of the grant is further conditioned upon full payment within ninety (90) days of today's date of any outstanding debt owed to the Board; ~~and~~

~~**BE IT FURTHER RESOLVED** that the Board directs staff to accept no new grant/loan applications for the remainder of FY 2004/2005 unless additional funds become available through cost recoveries or other measures.~~

CERTIFICATION

The undersigned Executive Director, or his designee, of the California Integrated Waste Management Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the California Integrated Waste Management Board held on February 15-16, 2005.

Dated:

Mark Leary
Executive Director